

**State of Colorado  
Department of State**

**HAVA DIVISION**



**SECRETARY OF STATE**  
**HAVA COMPLAINT: SOS-HAVA-47-04-0001**  
**January 27, 2005**

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**IN RE:**

**REPORT OF INVESTIGATION—NOVEMBER 2, 2004 GENERAL ELECTION**

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<b>IN RE:</b>	}	
	}	<b>SECRETARY OF STATE</b>
<b>REPORT OF INVESTIGATION</b>	}	<b>STATE OF COLORADO</b>
	}	<b>SOS-HAVA-47-04-0001</b>
<b>NOVEMBER 2, 2004 GENERAL ELECTION</b>	}	

## **I. Procedural Background**

On November 5, 2004, the Office of the Secretary of State (the "Office") received a written and signed complaint dated November 2, 2004, filed by the Peter Verschoor ("Verschoor") alleging specific violations of the Colorado Uniform Election Code and Title III of the Help America Vote Act of 2002 (42 USC 15512, *et seq.* (2002)) by the Park County Clerk and Recorder, Debbie Green ("Green"), with regard to an election official refusing to accept an expired Colorado driver's license as a suitable form of identification for the purpose of voting at the polling place (the "Polling Place"). Pursuant to the federal Help America Vote Act of 2002, Verschoor was permitted to vote a provisional ballot. Exhibit "1." On November 5, 2004, this Office acknowledged receipt of the complaint by letter to the Park County Clerk and Recorder and assigned a unique tracking number (SOS-HAVA-47-04-0001) to the complaint evidencing the file date.

This Office acknowledged in the letter that the Verschoor complaint met the requirements of § 1-1.5-105, 1 C.R.S. (2003), and the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15512, *et seq.* (2002); that the complaint was timely filed; and that this Office accepted jurisdiction. On November 5, 2004 this Office provided notice of the Verschoor complaint to Green. Green was advised of her right to a hearing; however, no hearing was requested.

This Office made two attempts to deliver the letter of acceptance of jurisdiction via the United States Postal Service to Verschoor; both attempts were returned to this Office citing insufficient address. Exhibit "2". This Office verified the address provided by both Verschoor and Park County Clerk and Recorder (Exhibit "3") and determined that no additional information had been provided that would allow this Office to contact Verschoor regarding this complaint.

The allegations contained in the complaint are not grounded in fact, but are grounded solely in the interpretation of law. As a result, there is no necessity to obtain statements of either the complainant or any witnesses in order to make a determination.

## **II. Jurisdiction**

Jurisdiction of the Office of Secretary of State is vested pursuant to § 1-1-107(2)(b), 1 Colorado Revised Statutes ("C.R.S.")(2003), which specifically authorizes the Secretary of State to review the practices and procedures of the County Clerk and Recorder of Park County, its employees and other election officials in the conduct of an election. These powers have been vested in the Secretary of State pursuant to Section 11 of Article VII of the State of Colorado Constitution to secure the purity of elections and to guard against the abuses of the elective franchise. *See* § 1-1-107(5), 1 C.R.S. (2003). Further, this Office is empowered to exercise any other powers or perform any other duties that are consistent with Article 1.5 of Title 1, C.R.S.

(2003) and that are reasonably necessary for the proper administration, implementation, and enforcement of the Help America Vote Act (“HAVA”) 42 U.S.C. 15512, et seq., (2002) and that will improve the conduct of elections in the state in conformity with HAVA. *See* § 1-1.5-104(1)(f), 1 C.R.S. (2003).

This Office determines that pursuant to § 1-1.5-105(2)(b), 1 C.R.S. (2003) and 42 U.S.C. 15512(a)(2)(B), Verschoor has standing to bring a complaint.

### **III. Issues Raised by the Complainant**

A. The complainant Verschoor alleges the following:

1. A Park County election official erred in refusing to accept an expired Colorado driver’s license as a suitable form of identification for the purpose of voting at the Polling Place.

### **IV. Conclusions of Law**

#### 1. Definition of a valid Colorado driver’s license.

§ 1-1-104 (19.5), C.R.S. provides for and defines various forms of identification that are acceptable at the Polling Place.<sup>1</sup> Subsection (I) requires that a Colorado driver’s license be valid in order to be accepted as a form of identification.

BLACK’S LAW DICTIONARY 1586 (8<sup>th</sup> ed. 2004) defines valid as “legally sufficient; binding.” The term “sufficient” is defined as “adequate; of such quality, number, force, or value as is necessary for a given purpose.” BLACK’S LAW DICTIONARY 1474 (8<sup>th</sup> ed. 2004).

MERRIAM-WEBSTER DICTIONARY (WWW.M-W.COM) defines “valid” as “having legal efficacy or force; *especially*: executed with the proper legal authority and formalities.”

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<sup>1</sup> Section 1-1-104(19.5), C.R.S. (2004) states:

(19.5)(a) “Identification” means:

(I) A valid Colorado driver’s license;

(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of Title 42, C.R.S.;

(III) A valid United States passport;

(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;

(V) A valid pilot’s license issued by the federal aviation administration or other authorized agency of the United States;

(VI) A valid United States military identification card with a photograph of the eligible elector;

(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;

(VIII) A valid medicare or Medicaid card issued by the United States health care financing administration;

(IX) A certified copy of a birth certificate for the elector issued in the United States; or

(X) Certified documentation of naturalization.

(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.

It is this Office's opinion that an expired driver's license does not meet this definition for the reason that an expired driver's license has no legal efficacy or force for the purposes for which it was issued—specifically, the authority to operate a motor vehicle in the state of Colorado.

2. Definition of a “current and valid photo identification” as required by the federal Help America Vote Act of 2002.

The identification requirements found in state law are derivative of the federal Help America Vote Act of 2002 (HAVA). While HAVA applies directly to first time voters, who register by mail, as defined in the Act, Section 305 of HAVA mandates that the identification requirements established therein are minimum standards and that a State is not precluded from establishing election administration requirements that are more strict than the requirements set forth in HAVA, so long as such State requirements are not inconsistent with the federal requirements under Title 42 of the United States Code or any law described in Section 906 of HAVA.

As a result, the General Assembly of Colorado is specifically authorized to mandate identification requirements that are more stringent than those imposed by HAVA as long as such requirements do not contravene the federal requirements of federal voting laws. In this case, the General Assembly elected to impose identification requirements on all voters who vote in person. This Office finds that the General Assembly of Colorado did not violate any federal voting laws, including HAVA, by mandating more stringent identification requirements for all voters rather than first time voters who register by mail.

Inasmuch as the General Assembly modeled the state identification requirements after HAVA, one can glean legislative intent from the wording of HAVA. Congress chose the express language of “current and valid photo identification” in framing the identification requirements in HAVA. HAVA represents the true balance of concerns regarding voter fraud and voter enfranchisement. The use of current and valid photo identification includes a driver's license issued by a state agency authorized to issue such identification.<sup>2</sup> Further, the identification requirements mandated by HAVA apply to all federal elections. It is conceivable that the General Assembly intended to impose the same identification requirements for all elections, both state and federal, that it conducted under the Title 1. This consistency of approach would eliminate dual standards for identification that would require one standard to be used during times when a non-federal election was conducted, and another when a federal election was conducted. As a result, this Office finds that the General Assembly did not intend to require a different standard for forms of identification other than those imposed by HAVA. Further, this Office believes that the use of “current and valid photo identification” in HAVA lends credence to the argument that a “current Colorado driver's license” also means a valid photo identification.

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<sup>2</sup> A driver's license issued by a governmental entity also falls under the “government document” definition set forth in Section 303(b)(2) of HAVA.

3. The protections of fail-safe voting by provisional ballot provide an additional safeguard to ensure that eligible electors who do not have proper identification are afforded the right to vote and to have the ballot counted.

This Office chooses to address a peripheral issue that is relevant to Verschoor's complaint. Regardless of whether Verschoor was able or unable to display a current and valid Colorado driver's license or any other statutorily required form of identification, under state and federal law, Verschoor had the right (and exercised the right) to vote on election day. This right is afforded by provisional voting, which permits a person whose name does not appear on the pollbook or does not have the requisite form of identification, to vote. Both state and federal law contemplate that individuals may not remember to bring an appropriate form of identification with them to the polling place. Electors, who have properly registered and who have forgotten their identification, still have the right to vote a provisional ballot. By his own admission, Verschoor was provided the opportunity to vote a provisional ballot. The law worked. It provided a fail-safe method to permit an eligible elector to vote.

It is true that there is some inconvenience in voting by a provisional ballot, but, as noted herein above, a balance must be struck between the prevention of voter fraud (and dilution of validly cast ballots) and protection against disenfranchisement of voters. While inconvenient, the solution of provisional or fail-safe voting provides a proper balance to ensure that every eligible voter is permitted to cast a ballot, to have that ballot counted, and not have the ballot discounted by fraudulently cast ballots.

## **V. Legal Authority**

The right to vote and have that vote counted is deeply seated in the history of the United States. The Supreme Court of the United States has recognized the right to vote as being a fundamental right in a democracy ordained by self-determination. Voting is one of the most fundamental and cherished liberties in our democratic system of government. *Burson v. Freeman*, 504 U.S. 191, 214 (1992)(Justice Kennedy, concurring). The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *Bush v. Gore*, 531 U.S. 98, 104-105 (2000). Undeniably the Constitution of the United States protects the rights of all qualified citizens to vote, in state as well as federal elections. A consistent line of decisions by this Court [the U.S. Supreme Court] in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, and to have their vote counted. *Reynolds v. Sims*, *supra*, at 544-555. It is unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in the box. *United States v. Mosley*, 238 U.S. 383, 386 (1915).

Section 1-1-107(2)(b), 1 C.R.S. (2003) authorizes the Secretary of State:

(2)(b) To inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, elections commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state.

Section 1-1.5-105, 1 C.R.S. (2003) provides in relevant part:

1-1.5-105. Complaint procedure

(1) Subject to the requirements of this section, in accordance with section 402 of HAVA, the secretary may establish by rule a uniform administrative complaint procedure to remedy grievances brought under title III of HAVA.

(2) Any rules promulgated pursuant to subsection (1) of this section shall provide for, but need not be limited to, the following:

(a) A uniform and nondiscriminatory complaint procedure;

(b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of Title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a complaint;

(c) A description by the complainant in his or her complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;

(d) A requirement that the complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later;

(e) A requirement that each complaint be in writing and notarized, signed, and sworn by the person filing the complaint;

(f) Authorization for the secretary to consolidate two or more complaints;

(g) At the request of the complainant, a hearing on the record;

(h) Authorization for the secretary to provide an appropriate remedy if the secretary determines that any provision of Title III of HAVA has been violated or to dismiss the complaint and publish the results of his or her review if the secretary determines that no provision of Title III of HAVA has been violated;

(i) A final determination on the complaint by the secretary prior to the expiration of the ninety-day (90) period that begins on the date the complaint is filed, unless the complainant consents to an extension of time for making such determination;



(j) Resolution of the complaint within sixty (60) days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the requirements of this section, if the secretary fails to satisfy the applicable deadline specified in paragraph (i) of this subsection (2), and the availability of the record and any other materials from any proceedings conducted under the complaint procedures established for use under such alternative dispute resolution procedures;

(k) Authorization for the secretary to conduct a preliminary review of any complaint submitted to him or her and to dismiss any complaint that he or she finds is not supported by credible evidence; and

(l) Recovery by the secretary of the costs of the proceeding against any complainant who files a complaint that, in connection with the final determination by the secretary pursuant to paragraph (i) of this subsection (2), is found, on the basis of clear and convincing evidence, to be frivolous, groundless, or vexatious.

(3) Notwithstanding any other provision of law:

(a) No complaint shall be brought pursuant to the procedure created by this section unless the complaint alleges a violation of Title III of HAVA;

(b) Proceedings for the resolution of a complaint brought pursuant to this section shall not be considered an adjudication under Article 4 of Title 24, C.R.S.; and

(c) The procedures created by this section shall constitute the exclusive administrative remedy for a violation of Title III of HAVA.

(4) Any person aggrieved by a final determination by the secretary acting pursuant to paragraph (i) of subsection (2) of this section may appeal the secretary's determination to the district court in and for the City and County of Denver within thirty (30) days of the date of the determination.

## **VI. Conclusion**

### **Summary of Final Determination**

This complaint raises the issue of acceptable forms of identification for the purpose of voting at the Polling Place. The core issue is whether an expired Colorado driver's license constitutes a "current Colorado driver's license" for purposes of identification for voting in elections held in the state of Colorado. This Office holds that an expired Colorado driver's license does not meet the legal requirements of a current Colorado driver's license for purposes of casting a ballot in an election in the state of Colorado under state or federal law.

RESPECTFULLY SUBMITTED this 27thrd day of January, 2005.

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Drew T. Durham  
Director of Colorado HAVA  
Office of the Secretary of State

APPROVED:

Date: \_\_\_\_\_

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Donetta Davidson  
Colorado Secretary of State

# Exhibit 1      Verschoor Complaint

**RECEIVED**

NOV 05 2004

ELECTIONS / LICENSING  
SECRETARY OF STATE

SOS-HAVA-47-04-0001

Park County  
Prec. 4

## COMPLAINT

For Alleged Violation of Title III of the  
Help America Vote Act of 2002  
(42 U.S.C. §15512)

Colorado Secretary of State, HAVA Division  
1560 Broadway, Suite 200  
Denver, Colorado 80202  
Phone: 303.894.2200, ext. 6314  
Fax: 303.869.4861

Pursuant to section 1-1.5-105, Colorado Revised Statutes, the Secretary of State has sole jurisdiction to adjudicate alleged violations of Title III of the Help America Vote Act of 2002 (HAVA). Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur may file a complaint. In order to initiate the complaint process, a sworn, written, signed and notarized complaint must be filed with the Secretary of State no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later. The complaint must allege the violation with particularity, contain a reference to the section of HAVA alleged to have been violated, and the person or entity responsible for the violation.

### PERSON BRINGING COMPLAINT

Name PETER VERSCHOOR Home Phone NONE Work Phone NONE  
Address 56034 HWY 285 County PARK  
City SHAWNEE State CO Zip Code 80475

### PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (limit one person/entity per form)

Name COLORADO SECRETARY OF STATE Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_  
Address \_\_\_\_\_ County \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### VIOLATION:

If you believe that a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring or is about to occur, please state the specific acts committed by the person or entity named in this complaint along with a reference to section of HAVA alleged to have been violated: (If you need more space please attach a separate sheet)

REFUSED TO ACCEPT EXPIRED  
DRIVER'S LICENSE AS VALID ID

STATE LAW SAYS EXPIRED DRIVER'S LICENSE IS  
A PERSONAL ID.

I HAVE VOTED IN THIS PRECINCT FOR ABOUT 13 YEARS,  
BEEN A PRECINCT COMMITTEE PERSON FOR 8 YEARS,  
AND HAD TO VOTE A PROVISIONAL BALLOT.

HAVA/Complaint/appvd/SOS/01/04

1

STATEMENT OF FACTS:

State in your own words the detailed facts and circumstances that form the basis of your complaint, including any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person and/or entity against whom this complaint is brought.

SEE ABOVE

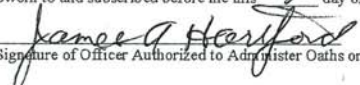
Check here if additional pages are attached ☐

STATE OF COLORADO  
COUNTY OF PARK

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Signature of Complainant

Sworn to and subscribed before me this 2 day of NOV, 20 04.

  
\_\_\_\_\_  
Signature of Officer Authorized to Administer Oaths or Notary Public

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

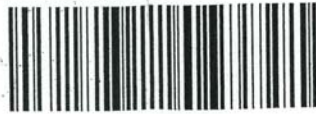
Personally known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

NOTICE: This Complaint is not confidential and, once filed with the Department of State, will be treated as a public record.

Exhibit 2      Verschoor Returned Mail

Secretary of State  
 Election Vote Act  
 Highway Suite 200  
 CO 80202

**CERTIFIED MAIL**



7002 0460 0002 8089 4110



UNITED STATES POSTAGE  
 PITNEY BOWES  
 02 1A \$ 04.65<sup>00</sup>  
 0004365162 NOV 05 2004  
 MAILED FROM ZIP CODE 80216

**REASON CHECKED**  
☐ Unclaimed  
☐ Attempted - Not Known  
☒ Insufficient Address  
☐ No Such Street  
☐ No Such Office in State  
☐ Do Not Remail This Envelope

Mr. Peter Verschoor  
 56034 Hwy 285  
~~SHAWNEE CO 80475~~

**RECEIVED**  
 NOV 08 2004  
 ELECTIONS / LICENSING  
 SECRETARY OF STATE

IA



Division  
 ment of State  
 roadway Suite 200  
 CO 80202

**CERTIFIED MAIL**



7002 0460 0002 8089 4165



UNITED STATES POSTAGE  
 PITNEY BOWES  
 02 1A \$ 04.65<sup>00</sup>  
 0004365162 NOV 08 2004  
 MAILED FROM ZIP CODE 80216

**REASON CHECKED**  
☐ Unclaimed  
☐ Attempted - Not Known  
☒ Insufficient Address  
☐ No Such Street  
☐ No Such Office in State  
☐ Do Not Remail This Envelope

Mr. Peter Verschoor  
 56034 S. Highway 285  
~~SHAWNEE CO 80475~~

**RECEIVED**  
 NOV 10 2004  
 ELECTIONS / LICENSING  
 SECRETARY OF STATE

IA





**STATE OF COLORADO**  
**Department of State**

Civic Center Plaza  
1560 Broadway, Suite 200  
Denver, CO 80202-5169



**Donetta Davidson**  
Secretary of State

**Drew T. Durham**  
Director, Colorado HAVA

**RECEIVED**

NOV 10 2004

ELECTIONS / LICENSING  
SECRETARY OF STATE

**RECEIVED**

NOV 08 2004

ELECTIONS / LICENSING  
SECRETARY OF STATE

November 5, 2004

Mr. Peter Verschoor  
56034 Hwy 285  
Shawnee, CO 80475

Re: Your Complaint dated November 5, 2004 alleging a violation of Title III of the Help America Vote Act of 2002. Tracking Number SOS-HAVA-47-04-0001

Dear Mr. Verschoor:

This letter will acknowledge receipt of your written, signed and sworn complaint filed November 5, 2004. Your complaint arises from alleged violations of Title III of the Help America Vote Act of 2002 (Public Law 107-252) in the November 2<sup>nd</sup>, 2004 General Election. You have stated that your complaint arises because an election official refused to accept your expired Colorado driver's license as a suitable form of identification for purposes of voting at the polling place. You further state that, although expired, a Colorado driver's license is a proper form of identification for purposes of voting pursuant to state and federal law.

This office finds that your complaint meets the legal requirements of Section 1-1.5-105, Colorado Revised Statutes, that the complaint is timely filed, and accepts jurisdiction over your complaint. Please note that your complaint has been assigned a unique tracking number, which is SOS-HAVA-47-04-0001. The date of receipt of your complaint is November 5, 2004. This letter also advises you that this office has ninety days in which to make a final determination (See Section 1-1.5-105(1)(i), Colorado Revised Statutes.) The ninety-day period begins on the date that the complaint is filed. Pursuant to Rule 31.5 of the Election Rules of the Secretary of State (which are enclosed), I am attaching a copy of the submitted complaint with evidence of receipt and assignment of a tracking number SOS-HAVA-47-04-0001.

You are further advised that pursuant to Section 1-1.5-105(g), Colorado Revised Statutes (2003), you may request a hearing on the record. However, this office further advises you that your complaint is founded upon interpretation of law and is not a question of fact. Therefore, testimony at a public hearing is not necessary to make a determination.

Sincerely,

Drew T. Durham  
Director of Colorado HAVA

Cc: The Honorable Debbie Green  
Park County Clerk and Recorder

Encl.

Main Number (303) 894-2200  
TDD (303) 869-4867  
Fax (303) 869-4861


Web Site  
E-mail

[www.sos.state.co.us](http://www.sos.state.co.us)  
[drew.durham@sos.state.co.us](mailto:drew.durham@sos.state.co.us)

## Exhibit 3      Verschoor Voter Registration Record

Colorado Secretary of State

Page 1 of 1



Logout

Colorado Secretary of State

[Elections Center](#) [Business Center](#) [Information Center](#) [Bingo/Raffle License Center](#)

### Voter Address Detail

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[Voter ID Detail](#) | [Voter Registration](#) | [Elections Information](#)

[Voter Address](#) | [New Voter Search](#)

Last Name	VERSCHOOR
First Name	PETER
Middle Name	JOHNSON
Suffix Name	
Residential Address	056034 HWY 285
Residential City	SHAWNEE
Residential Zip	80475
Mailing Address	56034 HWY 285
Mailing City	SHAWNEE
Mailing Zip	80475

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[Elections](#) | [Business](#) | [Information](#) | [Bingo License](#) | [Contact Us](#) | [Home](#)

11/8/2004